

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

ENTERED

October 27, 2022

Nathan Ochsner, Clerk

Jarvis DeWayne Hoskins

Plaintiff,

versus

Wendy Baker,

Defendant.

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Civil Action H-22-808

Memorandum Opinion on Dismissal

Wendy Baker has moved to dismiss the claims of Jarvis DeWayne Hoskins for lack of subject matter jurisdiction,¹ and her motion should be granted.

I. *Background.*

Hoskins, the *pro se* plaintiff, is currently incarcerated at the Texas Department of Criminal Justice Holliday Unit in Huntsville, Walker County, Texas.² At the time he filed this lawsuit, he resided in Humble, Harris County, Texas.³ Hoskins is a Texas citizen.⁴

Baker is a criminal defense attorney who resides in The Woodlands,

¹ [Doc. 14].

² [Doc. 18].

³ [Doc. 1] at 1.

⁴ *Id.* at 3.

Montgomery County, Texas.⁵ Baker is also a Texas citizen.⁶

In July 2019, Baker represented Hoskins in multiple criminal matters in Harris County, Texas and Montgomery County, Texas before withdrawing from representation.⁷

On March 2, 2022, Hoskins sued Baker in this Court to recover unearned legal fees paid to Baker totaling \$16,000, using the form *Pro Se* Complaint for a Civil Case.⁸ Section II of the form requires the plaintiff to select the basis for federal court jurisdiction.⁹ Hoskins checked federal question, but left blank the subsection for listing “the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.”¹⁰ Conversely, Hoskins did not check diversity of citizenship, yet completed the subsection for supplying facts supporting diversity of citizenship jurisdiction.¹¹

2. *Subject Matter Jurisdiction.*

This Court may hear only those cases authorized by a federal statute, the United States Constitution, or a United States treaty.¹² The plaintiff must overcome an initial presumption that the federal court lacks subject-matter

⁵ *Id.* at 2.

⁶ *Id.* at 4.

⁷ *Id.* at 4–5.

⁸ *See generally* [Doc. 1].

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 3–4.

¹² *Badgerow v. Walters*, 212 L. Ed. 2d 355, 142 S. Ct. 1310, 1315–16 (2022) (citing *Kokkonen v. Guardian Life Ins.*, 511 U.S. 375, 377 (1994)).

jurisdiction.¹³ Subject matter jurisdiction generally arises under federal-question jurisdiction or diversity of citizenship jurisdiction.

Federal-question jurisdiction exists when an action arises under the Constitution, laws, or treaties of the United States.¹⁴ A federal court has diversity jurisdiction when the suit involves a controversy between parties of diverse citizenship and the amount in controversy exceeds \$75,000.¹⁵

As Baker's motion to dismiss challenges the sufficiency of the allegations of jurisdiction, it is a facial attack, and the Court can dismiss for lack of subject-matter jurisdiction based on the complaint alone.¹⁶ The Court accepts all material allegations in the complaint as true and construes them in the light most favorable to the nonmovant.¹⁷ Because the complaint raises both bases for subject matter jurisdiction, federal-question jurisdiction and diversity of citizenship jurisdiction will both be addressed in turn.

A. Federal-Question Jurisdiction.

A case arises under federal law if a well-pleaded complaint establishes that either (1) federal law creates the cause of action or (2) the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law.¹⁸ Hoskins's complaint is based on services performed or to be performed

¹³ *Howery v. Allstate Ins.*, 243 F.3d 912, 916 (5th Cir. 2001).

¹⁴ U.S. Const. art 3, § 1; 28 U.S.C. § 1331.

¹⁵ 28 U.S.C. § 1332(a).

¹⁶ See *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 357 (3rd Cir. 2014); see also *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981).

¹⁷ *Id.* at 356 n.12; see also *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1976), overruled on other grounds, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

¹⁸ *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 689–90 (2006); see also *Singh v. Duane Morris, LLP*, 538 F.3d 334, 337–38 (5th Cir. 2008).

exclusively in Texas.¹⁹ This is a contract claim,²⁰ a state-law claim.²¹ There are no implications of federal preemption or interstate commerce.²² This case does not present a federal question, and jurisdiction does not exist on that basis.

B. Diversity of Citizenship Jurisdiction.

Diversity of citizenship jurisdiction exists when the suit involves a controversy between parties of diverse citizenship and the amount in controversy exceeds \$75,000.²³

Both Hoskins and Baker are Texas citizens, and the amount in controversy is \$18,000, far below the \$75,000 amount in controversy requirement.²⁴ Therefore, there is no diversity of citizenship, and the amount in controversy requirement has not been met. Jurisdiction cannot be sustained based on diversity of citizenship.

¹⁹ [Doc. 1] at 2.

²⁰ *Id.*

²¹ *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672 (1950) (contract claims, alone, do not create federal question jurisdiction).

²² See *Mem'l Hosp. Sys. v. Northbrook Life Ins. Co.*, 904 F.2d 236, 250 (5th Cir.1990) (ERISA, 28 U.S.C. § 1114, preempts state law breach of contract claims.); 28 U.S.C. § 1337 (creating federal jurisdiction over interstate commerce).

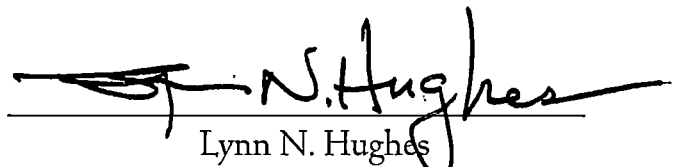
²³ 28 U.S.C. § 1332(a).

²⁴ [Doc. 1] at 3–6.

5. *Conclusion.*

The Court lacks subject matter jurisdiction to hear this dispute. As the jurisdictional defects in the complaint cannot be corrected, amendment would be futile, and dismissal is proper.²⁵ Jarvis DeWayne Hoskins's claims against Wendy Baker will be dismissed.²⁶

Signed on October 27, 2022, at Houston, Texas.


Lynn N. Hughes
United States District Judge

²⁵ See *Carolina Cas. Ins. v. Team Equip., Inc.*, 741 F.3d 1082, 1089 (9th Cir. 2014) (dismissal without leave to amend may be proper where amendment will be futile).

²⁶ Fed. R. Civ. P. 12(b)(1).